

After reviewing the preliminary hearing record and considering the arguments, the Appeals Board agrees with the finding of jurisdiction under the Kansas Workers

Compensation Act. The Appeals Board finds, however, that the injury did not arise out of and in the course of employment.

(1) The Appeals Board finds that there is jurisdiction under the Kansas Workers Compensation Act.

Claimant works as a co-driver with his wife. Claimant was injured in an accident while traveling from his home in Chillicothe, Missouri, to pick up a load at respondent's terminal in Kansas City, Kansas. The accident occurred in the State of Missouri.

K.S.A. 44-506 provides that the Kansas Workers Compensation Act applies to injuries sustained outside the state where: "(1) The principal place of employment is within the state; or (2) the contract of employment was made within the state. . . ." Claimant's contract of employment was entered into either in California or in Missouri. The Kansas Workers Compensation Act, therefore, applies only if claimant establishes that his principal place of employment was in Kansas.

Although claimant drove throughout the United States, he and his wife picked up their initial load each time at respondent's terminal in Kansas City, Kansas. They routinely went from there on a 21-day run. At the end of each run they were also required to return to the Kansas City, Kansas, terminal. Claimant and his wife received calls from the Kansas City terminal to notify them about their runs. In essence, respondent's terminal in Kansas City, Kansas, was their home base. The Appeals Board agrees with and affirms the decision by the Administrative Law Judge finding that this evidence is sufficient to establish Kansas as the principal place of employment. See Knelson v. Meadowlanders, Inc., 11 Kan. App. 2d 696, 732 P.2d 808 (1987).

(2) The Appeals Board finds that claimant's injuries do not arise out of and in the course of employment.

At the time of the accident, claimant was traveling from his home in Chillicothe, Missouri, in a truck owned by respondent. He and his wife were on their way to pick up a load at respondent's terminal in Kansas City, Kansas. The record reflects that the company generally expected drivers to leave the company truck at the terminal. For claimant, an exception was made because claimant wanted to leave his own vehicle at home while on the road. He and his wife had had problems with vandalism when their own vehicle was left at the respondent's terminal. Respondent did not pay claimant for the time going to and from the terminal. The Appeals Board finds claimant was on his way to work at the time of the accident. K.S.A. 1996 Supp. 44-508(f) provides:

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment

There are several exceptions to the "coming and going" rule. The Appeals Board concludes, however, none apply here. Claimant contends that the circumstances fit the exception recognized where travel is an integral part of employment. Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556, *rev. denied* 235 Kan. 1042 (1984). The Appeals Board does not consider that exception applicable here. The exception generally involves circumstances where an employee may begin the services of the employer immediately upon leaving his or her home. In this case, claimant's employment started and ended at the Kansas City, Kansas, terminal. The use of the company's truck to go to and from home was allowed as a convenience to claimant. Use of the company truck for the trip to and from work advanced no interest of the employer.

Claimant's injury did not arise out of and in the course of his employment.

WHEREFORE, the Appeals Board finds that the preliminary hearing Order Nunc Pro Tunc entered by Assistant Director Brad E. Avery, dated June 16, 1997, should be, and the same is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of September 1997.

BOARD MEMBER

c: Dennis L. Horner, Kansas City, KS
Dana D. Arth, Lenexa, KS
Brad E. Avery, Assistant Director
Philip S. Harness, Director